

COPY

IN THE COMMON PLEAS COURT FOR FRANKLIN COUNTY, OHIO

ULICO CASUALTY COMPANY
1625 Eye Street, NW
Washington, DC 20005

Plaintiff

v.

KEYBANK NATIONAL
ASSOCIATION
127 Public Square
Cleveland, OH 44114

and

VICTORY CAPITAL MANAGEMENT,
INC.
c/o Csc-Lawyers Incorporating
Service, statutory agent
50 West Broad Street
Suite 1800
Columbus, OH 43215

and

JAMES THOMPSON
88 East Broad Street
Columbus, OH 43215

Defendants.

Case No. _____

Judge _____

Category H

(JURY DEMAND ENDORSED
HEREON)

DEC 07 07 7799

COMPLAINT

Background

1. Defendant KeyBank National Association ("KeyBank") is a corporation with its principal place of business located in Cleveland, Ohio.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2005 JUL 20 PM 3:42
CLERK OF COURTS-CV

2. Defendant Victory Capital Management, Inc. ("Victory") is a corporation formed in the state of New York, with its principal place of business located in Cleveland, Ohio.

3. Sheet Metal Worker's Local 98 Pension Fund is a labor union pension fund with a principal place of business at 3033 Lamb Road, in Columbus, Ohio.

4. At all relevant times, the administrator for the pension fund was G. Daniel Carres.

5. Plaintiff Ulico Casualty Company ("Ulico") issued a Trustee and Fiduciary Liability Insurance Policy, policy number FLP-1803066. Sheet Metal Worker's Local 98 Pension Fund ("the pension fund") is a named insured under this policy.

6. At all relevant times, Defendants Victory and/or KeyBank acted as custodian of the pension fund's investment assets. As custodian, Victory and/or KeyBank were responsible for safeguarding the pension fund's assets and executing trades of securities as directed by the pension fund and its investment advisors.

7. At all relevant times, Defendant James Thompson was employed by KeyBank and/or Victory to act as the Account Administrator for the pension fund. As Account Administrator, Defendant James Thompson was responsible for safeguarding the pension fund's assets and executing trades of securities as directed by the pension fund and its investment advisors.

8. By letter dated January 30, 2003, Mr. Carres instructed Defendant James Thompson to transfer \$2 million of the pension fund's assets from the Loomis bond fund to the Mellon equity fund. A copy of this letter is attached hereto as Exhibit A.

9. Pursuant to these instructions, Defendant Thompson liquidated \$2 million of the pension fund's assets from the Loomis account on February 10, 2003.

10. Defendant Thompson negligently failed to promptly invest the proceeds of the sale of the Loomis shares in the Mellon equity fund until May 22, 2003.

11. As a proximate result of the negligence of Defendant Thompson, the pension fund suffered a loss of appreciation on the Mellon fund shares in the amount of \$259,114.12.

12. The pension fund made a claim for this loss pursuant to the terms of a Trustee and Fiduciary Liability Insurance Policy, policy number FLP-1803066, issued by Plaintiff Ulico.

13. Plaintiff Ulico ultimately paid \$250,000.00 to settle the pension fund's claim on or about February 15, 2005.

14. As a result of the payment under its policy, Plaintiff is subrogated to any claims for indemnification or contribution against Victory and/or KeyBank up to the amount of Plaintiff's payment of \$250,000.00.

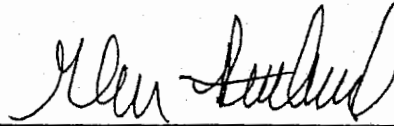
Count I: Negligence

15. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 14 herein by reference.

16. Defendant James Thompson owed a duty of due care and reasonable diligence to safeguard the pension fund's assets and timely execute trades of securities as directed by the pension fund and its investment advisors.

Respectfully Submitted,

CLARK, PERDUE, ARNOLD & SCOTT



GLEN R. PRITCHARD (0040453)

Attorney for Plaintiff

471 East Broad Street, Suite 1400

Columbus, OH 43215

Telephone: (614) 469-1400


Facsimile: (614) 469-0900

E-mail: gpritchard@cpaslaw.com

Jury Demand

Plaintiff hereby demands a trial by jury as to all issues triable to a jury.

CLARK, PERDUE, ARNOLD & SCOTT



GLEN R. PRITCHARD (0040453)

Attorney for Plaintiff

05/25/2004 16:20
JUL-24-2003 12:42

614-866-6055
LEGAL ADVISORS

LEONARD S. SIGALL

210 601 4400

PAGE 28
F.04



SHEET METAL WORKERS' LOCAL 98 PENSION FUND

G. DANIEL CARRIS
Secretary

3033 LAMB ROAD, COLUMBUS, OHIO 43219-2377
PHONE (614) 471-7832
FAX (614) 471-1163
TOLL FREE (877) 845-0603

10/10/03
12:00

January 30, 2003

James F. Thompson
Vice President
Institutional Asset Services
Victory Capital Management
88 East Broad Street
Columbus, Ohio 43215

VIA: FAX 614/460-2503

RE: TRANSFER OF FUNDS

Dear Jim:

Would you please debit account number 20-20-207-1087662 in the amount of \$2,000,000.00 (Two-Million Dollars), and credit account number 20-20-207-1087661 with the same amount.

Please see that this transfer is handled at your earliest convenience.

If you should need any additional information please let me know.

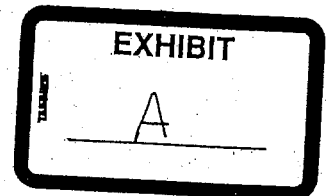
Yours truly,

G. Daniel Carris

G. Daniel Carris
Fund Manager

cc: file

*funds not ffd
until 2-10 because
Loomis had to
receive cash.*



04/11/03 11:18 0802/08/18

John O'Grady - Franklin County Clerk of Courts

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JURY DMD

...MORE

Title: ULICO CASUALTY COMPANY -VS- KEYBANK NATIONAL ASSOCIATION Category: H

Filing Date: 072005 Assigned Location: 7A Mult PLT: N Mult DEF: Y

Case Status: Legal: ACT Financial: Cause: OTHER CIVIL

| Line | Date | SUB# | ACTN | Description |
|------|--------|------|-------|--|
| 01 | 080105 | 0002 | 6310 | SERV COMP -CERT MAIL 072805 JAMES THOMPSON |
| 02 | 080105 | 0001 | 6310 | SERV COMP -CERT MAIL 072905 KEYBANK NATIONAL ASSOCIA |
| 03 | 072605 | 0004 | 6220 | SUMMONS ISSUED |
| 04 | 072605 | 0003 | 5810 | POS ISS - CERT MAIL 699004452091 01 D KEYBANK NATIONAL NARRATIVE - SYS GEN RETURNED - SERVED 072905 |
| 06 | 072605 | 0002 | 6220 | SUMMONS ISSUED |
| 07 | 072605 | 0001 | 5810 | POS ISS - CERT MAIL 699004452084 01 D JAMES THOMPSON NARRATIVE - SYS GEN RETURNED - SERVED 072805 |
| 09 | 072005 | 0015 | 7900 | MISCELLANEOUS PAPER CIVIL CASE INFOR SHEET |
| 11 | 072005 | 0014 | 6634 | DEPOSIT - FOR COSTS 162.00 P ULICO CASUALTY COMPANY |
| 12 | 072005 | 0013 | 9850C | JUDGE ASSIGN - ORIG 7A |

JOHN O'GRADY
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

ULICO CASUALTY COMPANY
1625 EYE STREET NW
WASHINGTON, DC 20005-0000,

05CVH-07-7799

PLAINTIFF,

VS.

CASE NUMBER

KEYBANK NATIONAL ASSOCIATION
127 PUBLIC SQUARE
CLEVELAND, OH 44114-0000,

DEFENDANT.

**** SUMMONS ****

07/20/05

TO THE FOLLOWING NAMED DEFENDANT:
KEYBANK NATIONAL ASSOCIATION
127 PUBLIC SQUARE
CLEVELAND, OH 44114-0000

RECEIVED
JUL 29 2005
LAW DEPARTMENT

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN FRANKLIN COUNTY
COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,
BY: ULICO CASUALTY COMPANY
1625 EYE STREET NW
WASHINGTON, DC 20005-0000,

PLAINTIFF(S).

A COPY OF THE COMPLAINT IS ATTACHED HERETO. THE NAME AND ADDRESS OF
THE PLAINTIFF'S ATTORNEY IS:

GLEN R. PRITCHARD
CLARK, PERDUE, ROBERTS, SCOT
471 EAST BROAD STREET
SUITE 1400
COLUMBUS, OH 43215-0000

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON THE PLAINTIFF'S
ATTORNEY, OR UPON THE PLAINTIFF, IF HE HAS NO ATTORNEY OF RECORD, A COPY
OF AN ANSWER TO THE COMPLAINT WITHIN TWENTY-EIGHT DAYS AFTER THE SERVICE
OF THIS SUMMONS ON YOU, EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER
MUST BE FILED WITH THE COURT WITHIN THREE DAYS AFTER THE SERVICE OF A
COPY OF THE ANSWER ON THE PLAINTIFF'S ATTORNEY.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED
AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

JOHN O'GRADY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: SANDY THOMAS, DEPUTY CLERK

(CIV370-S03)

JOHN O'GRADY
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

JUDGE G. REECE

ULICO CASUALTY COMPANY,
PLAINTIFF,

VS.

KEYBANK NATIONAL ASSOCIATION
ET. AL.,

DEFENDANT.

05CVH-07-7799

CASE NUMBER

CLERK'S ORIGINAL CASE SCHEDULE

| | LATEST TIME OF OCCURRENCE |
|--|------------------------------|
| CASE FILED | 07/20/05 |
| INITIAL STATUS CONFERENCE | ***** |
| INITIAL JOINT DISCLOSURE OF ALL WITNESSES | 12/07/05 |
| SUPPLEMENTAL JOINT DISCLOSURE OF ALL WITNESSES | 02/01/06 |
| TRIAL CONFIRMATION DATE | 02/15/06 |
| DISPOSITIVE MOTIONS | 04/26/06 |
| DISCOVERY CUT-OFF | 05/10/06 |
| DECISIONS ON MOTIONS | 06/21/06 |
| FINAL PRE-TRIAL CONFERENCE/ORDER (OR BOTH) | ***** |
| TRIAL ASSIGNMENT | 08/31/06 0900AM |

NOTICE TO ALL PARTIES

ALL ATTORNEYS AND PARTIES SHOULD MAKE THEMSELVES FAMILIAR WITH THE COURT'S LOCAL RULES, INCLUDING THOSE REFERRED TO IN THIS CASE SCHEDULE. IN ORDER TO COMPLY WITH THE CLERK'S CASE SCHEDULE, IT WILL BE NECESSARY FOR ATTORNEYS AND PARTIES TO PURSUE THEIR CASES VIGOROUSLY FROM THE DAY THE CASES ARE FILED. DISCOVERY MUST BE UNDERTAKEN PROMPTLY IN ORDER TO COMPLY WITH THE DATES LISTED IN THE RIGHT-HAND COLUMN.

BY ORDER OF THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

____/____/____
DATE

JOHN O'GRADY, CLERK

(CIV363-S10)